

Honorable Judge Benjamin Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NOW COMES Plaintiff, Clyde Ray Spencer, by and through his attorneys, and hereby moves this Court for leave to file the Supplemental Declaration in Support of Plaintiff's Responses to Defendants' Motions for Summary Judgment, Instanter. In support of this motion Plaintiff states as follows:

1. Plaintiff filed his responses to Defendants' motion for summary judgment on February 14, 2013. Defendant Peters' reply is currently due February 22. By stipulation pending order of this Court, Defendants Davidson's and Krause's replies are due five court days after they receive the transcript of Menona Landrum's deposition. (Dkt. 155).

PLAINTIFF'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL DECLARATION IN SUPPORT OF RESPONSES TO MOTIONS FOR SUMMARY JUDGMENT (C11-5424BHS) — 1

Kathleen T. Zellner & Associates, P.C.
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630.955.1212 main 630.955.1111 fax

1 2. Pages from the following exhibits, which are cited in Plaintiff's responses, were
 2 inadvertently omitted from the Declaration of Kathleen T. Zellner (Dkt. 153) filed in support of
 3 Plaintiff's responses:

4 a. Exhibit U, the deposition of Ann Link, is missing pages 25-27. This
 5 portion of Exhibit U is cited in Plaintiff's Response to Defendant Peters'
 6 Renewed Motion for Summary Judgment (Dkt. 151) at p. 6, ln. 8-11.

7 b. Exhibit KK, the habeas deposition of James Peters, is missing page 31.
 8 This portion of Exhibit KK is cited in Plaintiff's Response to Defendant
 9 Peters' Renewed Motion for Summary Judgment (Dkt. 151) at p. 14, ln.
 10 13-19.

11 c. Exhibit F, the deposition of James Michael Davidson, is missing pages
 12 130-131. This portion of Exhibit F is cited in Plaintiff's Response to
 13 Defendant Peters' Renewed Motion for Summary Judgment (Dkt. 151)
 14 at p. 11, ln. 22-24.

15 3. On page 5, ln. 22 of Plaintiff's Response to Defendant Krause's Second Motion
 16 for Summary Judgment (Dkt. 150), and page 17 of Plaintiff's Response to Defendant
 17 Davidson's Renewed Motion for Summary Judgment (Dkt. 152), Plaintiff inadvertently cited to
 18 Exhibit D (Shirley Spencer habeas evidence deposition) rather than Exhibit WW (Shirley
 19 Spencer habeas discovery deposition).

20 4. On page 19, ln. 14 of Plaintiff's Response to Defendant Krause's Second
 21 Motion for Summary Judgment (Dkt. 150), Plaintiff inadvertently failed to cite to page 157 of
 22 Exhibit R, the deposition of Dr. William Bernet, which provides context to page 156.

1 5. On page 20, ln. 6-7 of Plaintiff's Response to Defendant Krause's Second
 2 Motion for Summary Judgment (Dkt. 150), Plaintiff inadvertently cited to page 31, rather than
 3 page 10, of Exhibit E.

4 6. On pages 7-8, ln. 23-2 of Plaintiff's Response to Defendant Krause's Second
 5 Motion for Summary Judgment (Dkt. 150), page 3, ln. 12-14 of Plaintiff's Response to
 6 Defendant Davidson's Renewed Motion for Summary Judgment (Dkt. 152), and page 4 of
 7 Plaintiff's Response to Defendant Peters' Renewed Motion for Summary Judgment (Dkt. 151),
 8 Plaintiff inadvertently failed to cite to pages 49-50 of Exhibit G, which is necessary to provide
 9 context to page 51 of Exhibit G.

10 7. On page 9, ln. 17-19 of Plaintiff's Response to Defendant Peters' Renewed
 11 Motion for Summary Judgment (Dkt. 151), Plaintiff inadvertently cited to page 257, rather than
 12 pages 97-98, of Exhibit Q.

13 8. On page 15, ln. 15 of Plaintiff's Response to Defendant Peters' Renewed
 14 Motion for Summary Judgment (Dkt. 151), Plaintiff inadvertently cited to page 21, rather than
 15 page 217, of Exhibit H.

16 9. On page 19, ln. 2 of Plaintiff's Response to Defendant Peters' Renewed Motion
 17 for Summary Judgment (Dkt. 151), Plaintiff inadvertently cited to pages 9 and 14, rather than
 18 page 10, of Exhibit G.

19 10. On page 12, fn. 5 of Plaintiff's Response to Defendant Davidson's Renewed
 20 Motion for Summary Judgment (Dkt. 152), Plaintiff inadvertently cited to Exhibit C
 21 (deposition of Ray Spencer), rather than Exhibit I (deposition of Matt Spencer), at page 101.

22 11. Plaintiff therefore seeks leave to file the Supplemental Declaration of Kathleen
 23 T. Zellner in Support of Plaintiff's Responses to Defendants' Renewed / Second Motions for
 24 Summary Judgment, Instanter, attached to this motion as Exhibit 1.

1 WHEREFORE, Plaintiff respectfully requests that this Court grant the instant motion
2 for leave to file the Supplemental Declaration of Kathleen T. Zellner in Support of Plaintiff's
3 Responses to Defendants' Motions for Summary Judgment, Instanter.

4 /s/ Kathleen T. Zellner
5 Kathleen T. Zellner & Associates, P.C.
6 Admitted *pro hac vice*
7 1901 Butterfield Road
8 Suite 650
9 Downers Grove, Illinois 60515
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kathleen.zellner@gmial.com
Attorney for Plaintiffs

10 /s/ Daniel T. Davies
11 Daniel T. Davies, WSBA # 41793
12 Local counsel
13 David Wright Tremaine LLP
14 1201 Third Avenue, Suite 2200
15 Seattle, Washington 98101-3045
16 Phone: (206) 757-8286
17 Fax: (206) 757-7286
18 Email: dandavies@dwt.com
19 Attorney for Plaintiffs

DECLARATION OF SERVICE

I hereby certify that on February 18, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the attorneys of record as follows:

<p>Patricia Campbell Fetterly Daniel J. Judge Robert M. McKenna Assistant Attorney General Torts Division PO Box 40126 Olympia, WA 98504-0116 Email: patriciafl@atg.wa.gov Attorneys for Defendant James M. Peters</p>	
<p>Guy Bogdanovich Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S. P.O. Box 11880 Olympia, WA 98508-1880 Email: gbogdanovich@lldkb.com Attorney for Defendant Sharon Krause</p>	<p>Jeffrey A. O. Freimund Freimund Jackson Tardif & Benedict Garratt, PLLC 711 Capitol Way South, Suite 602 Olympia, WA 98502 Email: jeffF@fjtlaw.com Attorneys for Defendant Michael Davidson</p>

/s/ Kathleen T. Zellner
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Attorney for Plaintiffs

EXHIBIT 1

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

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4 Honorable Judge Benjamin Settle
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, }
Plaintiff, } No. C11-5424BHS
v. }
JAMES M. PETERS, et al., }
Defendants. } **SUPPLEMENTAL
DECLARATION OF
KATHLEEN T. ZELLNER IN
SUPPORT OF PLAINTIFF'S
RESPONSE TO DEFENDANTS'
RENEWED/SECOND MOTIONS
FOR SUMMARY JUDGMENT**
} **NOTE ON MOTION
CALENDAR:**
} **Friday, March 8, 2013**

Pursuant to 28 U.S.C. § 1746, Kathleen T. Zellner declares under penalty of perjury under the laws of the State of Washington and the United States of America that the following is true and accurate:

1. I am the attorney of record for Plaintiff Clyde Ray Spencer in the above entitled action. I am competent to testify in all respects, and make this declaration from personal knowledge.

SUPPLEMENTAL DECLARATION OF KATHLEEN T.
ZELLNER IN SUPPORT OF PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT
(C11-5424BHS) — 1

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1 2. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from the
2 deposition of Sharon Krause, taken May 22, 1996, in the matter of *Clyde Raymond Spencer v.*
3 *Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the
4 following page from the transcript of the deposition is attached: 10.

5 3. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from the
6 deposition of James Michael Davidson. Specifically, the following pages from the transcript of
7 the deposition are attached: 129-32.

8 4. Attached hereto as **Exhibit G** is a true and correct copy of excerpts from the
9 deposition of Sharon Krause. Specifically, the following pages from the transcript of the
10 deposition are attached: 10, and 48-51.

11 4. Attached hereto as **Exhibit H** is a true and correct copy of excerpts from the
12 deposition of Rebecca Roe. Specifically, the following page from the transcript of the
13 deposition is attached: 217.

14 6. Attached hereto as **Exhibit I** is a true and correct copy of excerpts from the
15 deposition of Matthew Spencer. Specifically, the following page from the transcript of the
16 deposition is attached: 101.

17 7. Attached hereto as **Exhibit Q** is a true and correct copy of excerpts from the
18 deposition of James Peters. Specifically, the following pages from the transcript of the
19 deposition are attached: 97-98.

20 8. Attached hereto as **Exhibit R** is a true and correct copy of excerpts from the
21 deposition of Dr. William Bernet. Specifically, the following page from the transcript of the
22 deposition is attached: 157.

23 27 SUPPLEMENTAL DECLARATION OF KATHLEEN T.
24 ZELLNER IN SUPPORT OF PLAINTIFF'S RESPONSE TO
25 DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT
26 (C11-5424BHS) — 2

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9. Attached hereto as **Exhibit U** is a true and correct copy of excerpts from the deposition of Dr. Ann Link. Specifically, the following pages from the transcript of the deposition are attached: 25-27.

10. Attached hereto as **Exhibit KK** is a true and correct copy of excerpts from the deposition of James Peters, taken July 30, 1996, in the matter of *Clyde Raymond Spencer v. Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the following page from the transcript of the deposition is attached: 31.

11. Attached hereto as **Exhibit WW** is a true and correct copy of excerpts from the discovery deposition of Shirley Spencer, taken June 4, 1996, in the matter of *Clyde Raymond Spencer v. Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the following page from the transcript of the deposition is attached: 10.

SIGNED this 18th day of February, 2013 in Downers Grove, Illinois.

Respectfully submitted,

/s/ Kathleen T. Zellner
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SUPPLEMENTAL DECLARATION OF KATHLEEN T.
ZELLNER IN SUPPORT OF PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT
(C11-5424BHS) — 3

DECLARATION OF SERVICE

I hereby certify that on February 18, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the attorneys of record as follows:

<p>Patricia Campbell Fetterly Daniel J. Judge Robert M. McKenna Assistant Attorney General Torts Division PO Box 40126 Olympia, WA 98504-0116 Email: patriciafl@atg.wa.gov</p> <p>Attorneys for Defendant James M. Peters</p>	
<p>Guy Bogdanovich Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S. P.O. Box 11880 Olympia, WA 98508-1880 Email: gbogdanovich@lldkb.com</p> <p>Attorney for Defendant Sharon Krause</p>	<p>Jeffrey A. O. Freimund Freimund Jackson Tardif & Benedict Garratt, PLLC 711 Capitol Way South, Suite 602 Olympia, WA 98502 Email: jeffF@fjtlaw.com</p> <p>Attorneys for Defendant Michael Davidson</p>

/s/ Kathleen T. Zellner

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SUPPLEMENTAL DECLARATION OF KATHLEEN T.
ZELLNER IN SUPPORT OF PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT
(C11-5424BHS) — 4

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EXHIBIT E

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

IN THE UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAYMOND SPENCER,)
Petitioner,)
vs.) No. C94-5238RJB
JOSEPH KLAUSER, Warden, Idaho)
State Institution; CHRISTINE)
GREGOIRE, Attorney General,)
State of Washington,)
Respondents.)

ORIGINAL

DEPOSITION UPON ORAL EXAMINATION

08

SHARON A. KRAUSE

DATE TAKEN: May 22, 1996

TIME: 10:30 a.m.

PLACE: Hall of Justice
Longview, Washington

SUZAN R. WELLS
Archer Associates, Inc.
P. O. Box 1092
Longview, Washington 98632
(360) 423-2195

1 whether or not something occurred without leading them.
2 Afterward I always spoke to the parents again alone
3 without the child present, shared with them what the
4 child said to me, and then had the child come back into
5 the room and in summary tell the parents what the child
6 told me so the child didn't leave there thinking maybe
7 the parents didn't know what happened. And there's
8 reasons why I did all of those things.

9 Make reports, do any follow-up that, you know, can
10 assist in establishing whether or not something
11 occurred, attempt to interview the accused if possible.
12 Sometimes we made arrests. And then forward the reports
13 to the prosecutor.

14 Q Let me ask you, when the investigation concerned a young
15 child, say under the age of ten, and the allegations
16 included allegations of either vaginal or anal
17 penetration, would you refer the parent and child to a
18 physician for a sexual assault examination?

19 A Yes.

20 Q Did you have particular physicians or places that you
21 would refer parents and children to in Vancouver?

22 A Initially when I began doing this, no. There were times
23 when we might have made referrals to -- you know, people
24 have their own physicians, to Vancouver Clinic. There
25 are some people -- There are a number of doctors now in

CERTIFICATE OF NOATRY PUBLIC

STATE OF WASHINGTON) : ss.
County of Clark)

6 I, SUZAN R. WELLS, a notary public for the State of
7 Washington, do hereby certify that SHARON A. KRAUSE, a
8 witness, personally appeared before me at the time and place
9 mentioned in the caption herein; that said witness was by me
10 first duly sworn on oath, and examined upon oral
11 interrogatories propounded by counsel; that said examination,
12 together with the testimony of said witness was written by
13 me in machine shorthand and thereafter reduced to
14 typewriting; and that the foregoing transcript constitutes a
15 full, true and accurate record of said examination of and
16 testimony given by said witness, and of all other oral
17 proceedings had during the taking of said deposition, and of
18 the whole thereof.

SUZAN R. WELLS, CSR #WELLSSR325BH
Notary Public for the State of
Washington, residing at Vancouver,
Washington. My commission
expires on 8/29/97.

EXHIBIT F

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

1

5 CLYDE RAY SPENCER, MATTHEW)
RAY SPENCER, and KATHRYN E.)
TETZ,)
6)
7 Plaintiffs,)
8)
9 vs.) NO. 3:11-cb-05424-BHS
10 FORMER PROSECUTING ATTORNEY)
11 FOR CLARK COUNTY JAMES M.)
12 PETERS, DETECTIVE SHARON)
13 KRAUSE, SERGEANT MICHAEL)
DAVIDSON, CLARK COUNTY)
PROSECUTOR'S OFFICE, CLARK)
COUNTY SHERIFF'S OFFICE, THE)
COUNTY OF CLARK and JOHN DOES)
ONE THROUGH TEN,)
13)
Defendants.)

15 DEPOSITION UPON ORAL EXAMINATION OF JAMES MICHAEL DAVIDSON

Monday, November 5, 2012
Olympia, Washington

ZELLNER (James Michael Davidson, 11/5/12)

129

1 evidence in this case mysteriously appears, so I want to
2 make sure that I'm provided with that in time to redepose
3 him.

4 Q (By Ms. Zellner) I want to ask you if all of the prior
5 testimony you've given under oath is true.

6 A To the best of my knowledge and ability to recall.

7 Q Would you agree that the investigation of Ray Spencer was
8 conducted exclusively under your supervision?

9 A No.

10 Q Okay. If not, tell me why you disagree with that
11 statement.

12 A Well, first of all, I believe the prosecutor would have
13 been involved and --

14 Q I'm talking about the investigation.

15 A That would have been part of --

16 Q Yeah.

17 A That would have been part of the prosecutor's review. He
18 may have had --

19 Q So you're talking about Jim Peters?

20 A I'm talking about any -- any prosecutor that would have
21 been involved with the Spencer investigation.

22 Q Well, do you know of any prosecutor other than Jim Peters
23 that was involved with the Spencer investigation?

24 A I could name one specifically, yes.

25 Q Who else besides Jim Peters?

ZELLNER (James Michael Davidson, 11/5/12)

130

1 A Art Curtis.

2 Q So it's your testimony --

3 MS. FETTERLY: I'm just going to pose an
4 objection to the form of this line of questioning, but go
5 ahead and answer.

6 THE WITNESS: Okay.

7 A I'm sorry, I didn't give you a chance to --

8 Q (By Ms. Zellner) So can you explain to me the involvement
9 of Art Curtis in the investigation.

10 MS. FETTERLY: Object to the form of the
11 question.

12 You can answer if you can.

13 A Ultimately I think all decisions for charging rested with
14 the prosecuting attorney of Clark County. Therefore, Art
15 Curtis being the prosecutor at that time, I assume he would
16 have made any of those decisions.

17 Q (By Ms. Zellner) But my question was: Did you have
18 exclusive control over supervising the Ray Spencer
19 investigation?

20 A And, again, I'm going to respond that no, that's not a
21 correct statement.

22 Q And is it your testimony that prosecutor Jim Peters and Art
23 Curtis were involved in the Ray Spencer investigation?

24 MS. FETTERLY: Object to the form of the
25 question. Clarify what you mean by "investigation" to be

ZELLNER (James Michael Davidson, 11/5/12)

131

1 certain that the witness understands.

2 Q (By Ms. Zellner) You know what an investigation is. I'm
3 talking about prior to charging.

4 MS. ZELLNER: I would ask you not to coach him.

5 MS. FETTERLY: I'm making objection to the form
6 of the question.

7 MS. ZELLNER: You can make the objections, but
8 you can't coach the witness. He's the one that interjected
9 their names into the investigation. I'm asking him --

10 MS. FETTERLY: But, Ms. Zellner, you're using a
11 legal --

12 MS. ZELLNER: -- other than -- would you please
13 stop coaching the witness?

14 MS. FETTERLY: You're using a legal term.
15 That's why I'm making my objection.

16 MS. ZELLNER: "Investigation" is not a legal
17 term.

18 MS. FETTERLY: It can be.

19 Q (By Ms. Zellner) Tell me again. Was the Ray Spencer
20 investigation under your exclusive supervision prior to the
21 charging?

22 MR. FREIMUND: Objection. It's been asked and
23 answered twice.

24 Go ahead and answer a third time.

25 A The third time again, I would respond no.

ZELLNER (James Michael Davidson, 11/5/12)

132

1 Q (By Ms. Zellner) And then my question is: If you were not
2 exclusively supervising the Ray Spencer investigation, who
3 else was involved in the Ray Spencer investigation
4 supervising it?

5 A Again, as I indicated previously, the prosecutor -- the
6 prosecuting attorney's office was involved during the
7 course of the investigation.

8 MS. ZELLNER: Okay. All right. I don't have
9 any further questions.

10 MR. FREIMUND: I don't have any follow-up.

11 MS. ZELLNER: Do you want to waive or reserve?

12 MR. FREIMUND: We reserve.

13 Anybody else?

14 MR. BOGDANOVICH: No.

15 MS. FETTERLY: No.

16 (Concluded at 0:00 a.m.)

17 (Signature reserved)

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1 C E R T I F I C A T E

2 I, DIXIE J. CATTELL, the undersigned Registered
3 Professional Reporter and Washington Certified Court Reporter,
4 do hereby certify:

5 That the foregoing deposition of JAMES MICHAEL
6 DAVIDSON was taken before me and completed on the 5th day of
7 November, 2012, and thereafter transcribed by me by means of
8 computer-aided transcription; that the deposition is a full,
9 true and complete transcript of the testimony of said witness;

10 That the witness, before examination, was, by me,
11 duly sworn to testify the truth, the whole truth, and nothing
12 but the truth, and that the witness reserved signature;

13 That I am not a relative, employee, attorney or
14 counsel of any party to this action or relative or employee of
15 such attorney or counsel, and I am not financially interested
16 in the said action or the outcome thereof;

17 That I am herewith securely sealing the deposition of
18 JAMES MICHAEL DAVIDSON and promptly serving the same upon
19 MS. KATHLEEN ZELLNER.

20 IN WITNESS HEREOF, I have hereunto set my hand
21 this _____ day of _____, 2012.

22

23

24 Dixie J. Cattell, RPR, CCR
NCRA Registered Professional Reporter
Washington Certified Court Reporter CSR#2346
25 License Expires July 16, 2013.

EXHIBIT G

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

CLYDE RAY SPENCER, MATTHEW)
RAY SPENCER, and KATHRYN E.)
TETZ,)
Plaintiffs,)
vs.)
NO. 3:11-cb-05424-BHS
FORMER PROSECUTING ATTORNEY)
FOR CLARK COUNTY JAMES M.)
PETERS, DETECTIVE SHARON)
KRAUSE, SERGEANT MICHAEL)
DAVIDSON, CLARK COUNTY)
PROSECUTOR'S OFFICE, CLARK)
COUNTY SHERIFF'S OFFICE, THE)
COUNTY OF CLARK and JOHN DOES)
ONE THROUGH TEN,)
Defendants.)

15 DEPOSITION UPON ORAL EXAMINATION OF SHARON KRAUSE

Tuesday, November 6, 2012
Olympia, Washington

ZELLNER (Sharon Krause, 11/6/12)

10

1 Q And why are you sure that it was? Was that a common
2 practice for you to prepare indexes on your case files?

3 A Not on every case, but when we had a major case --
4 I have to apologize for my voice, but I had a throat
5 infection this summer, and so it's a little raspy.

6 Q Sure. Okay.

7 A When it involved more than one victim or it involved
8 several children or several witnesses, then I would prepare
9 this index. In the event somebody later needed to find
10 something, they would know which section it was in.

11 Q And was the index stored with the file, or where was it
12 kept in the Sheriff's Department?

13 A You know, it -- usually when I prepared the index, it was
14 after the case was completed and I'm putting it all
15 together, and then that index would be attached to the
16 complete file.

17 Q And do you know if the complete file with the index that
18 was prepared on August 30, 1984, was at some point in time
19 sent to the prosecutor's office before Ray Spencer's plea?

20 A I can't say that, no. I don't know that that index went
21 there.

22 Q Who was responsible for gathering up the documents in a
23 case including the index and sending them over to the
24 prosecutor's office, sending the documents?

25 A It depended on the case. If -- you know, this was a real

ZELLNER (Sharon Krause, 11/6/12)

48

1 Q And Shirley Spencer was very upset and confused about what
2 was going on, right?

3 A Ray Spencer came in that 9/21 to take the polygraph.

4 Q Right. And Shirley Spencer was with him, correct?

5 A Correct. That's correct.

6 Q And then Mike Davidson was also present, and he talked to
7 Shirley Spencer, you and Mike Davidson?

8 A Correct.

9 Q Okay. Shirley Spencer was extremely upset and confused
10 about what was going on, correct?

11 A Based on the report, she was having a real hard time.

12 Q Right. And you even document that she was crying or she
13 was attempting to hold back tears?

14 A That's correct.

15 Q Is that accurate?

16 A Yes.

17 Q Shirley Spencer makes -- apparently indicates that she
18 found it was very difficult to believe that there was even
19 a possibility that her husband Ray would have had any type
20 of sexual contact with Kathryn. That's correct?

21 A That's what it reflects, the report, yes.

22 Q And Shirley Spencer also indicated that she lived -- during
23 the time she had lived with Spencer, she never observed
24 anything that would have concerned her regarding Ray
25 Spencer having a problem specifically being sexually

ZELLNER (Sharon Krause, 11/6/12)

49

1 attracted to children. That's the information she conveyed
2 to you?

3 A Yes.

4 Q And she also told you that she had a four-year-old son and
5 grandchildren, and she would have been concerned about
6 their safety if she even suspected something like that
7 would happen, right?

8 A Correct.

9 Q Shirley Spencer said that she wished she had never said
10 anything, correct, because of all the problems it had
11 caused?

12 A Yes.

13 Q Shirley Spencer, during that meeting, never indicates to
14 you that she suspects her husband Ray of abusing Kathryn or
15 the other children; is that right?

16 A Could you ask me that again?

17 Q Sure. There's no indication in your meeting with Shirley
18 Spencer on 9/21/84 that she has any doubt about Ray
19 Spencer's innocence of the allegations?

20 A I think initially in this interview she consistently
21 expressed her feelings that, you know, she didn't -- well,
22 let me rephrase.

23 She said she found it hard to believe. She never saw
24 anything that would have caused her concern. However, she
25 was the one who called and reported based on Kathryn's

ZELLNER (Sharon Krause, 11/6/12)

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1 initial disclosure. So I can't say what Shirley Spencer
2 felt, but, you know, she had concerns and so she acted on
3 those.

4 Q Right. But you would agree Ray Spencer's actually the one
5 who had her write up everything that Kathryn had told to
6 her, correct, that Ray asked her to document?

7 MR. BOGDANOVICH: Object to the form.

8 You can answer.

9 Q (By Ms. Zellner) Is that your understanding, that Ray had
10 asked her to document the allegations?

11 A What I understand is when I spoke to him, he told me he
12 told her to write it down. You know, that's the
13 information I had.

14 Q Well, she actually did write up the allegations, right?

15 A She did, and I had a copy of those.

16 Q Right. And my point is, at this meeting, without trying to
17 read her mind, she doesn't express any concern that Ray
18 Spencer had molested her daughter Kathryn? Would you agree
19 with that?

20 A I guess I don't like the word "concerned." She didn't want
21 to believe it. I don't think -- you know, she was
22 reluctant to even entertain the possibility. I can't say
23 whether she had concerns. I think she had concerns, but --

24 Q Well, she was -- okay. But she wasn't concerned about Ray
25 Spencer. In that interview on page 7 of 12, she's actually

ZELLNER (Sharon Krause, 11/6/12)

51

1 expressing concern about the children's biological mother,
2 DeAnne Spencer, if you'll look at page 7 of 12, two
3 paragraphs from the bottom. She was expressing concerns
4 about DeAnne Spencer and that she might have a man living
5 with her that could be responsible for this.

6 A She did tell me that, yes.

7 Q Do you see that?

8 A Um-hmm.

9 Q Right.

10 A Yes.

11 Q So, certainly at this point in your investigation, you
12 would say that -- or would you agree that there was
13 absolutely no probable cause to arrest Ray Spencer for
14 molesting Katie Spencer?

15 A I don't think at that point there would have been probable
16 cause, no.

17 Q Right. And you would agree with me that sometimes in an
18 investigation, there are indications that there is not
19 probable cause to arrest someone, correct?

20 A Could you ask me that again?

21 Q Right. As you proceed in this investigation, you clear
22 certain people, like you end up clearing Karen Stone of any
23 involvement even though she's mentioned in the initial
24 allegations. Do you recall doing that?

25 A Yes.

202

1

C E R T I F I C A T E

2

I, DIXIE J. CATTELL, the undersigned Registered
3 Professional Reporter and Washington Certified Court Reporter,
4 do hereby certify:

5

That the foregoing deposition of SHARON KRAUSE was
6 taken before me and completed on the 6th day of November,
7 2012, and thereafter transcribed by me by means of
8 computer-aided transcription; that the deposition is a full,
9 true and complete transcript of the testimony of said witness;

10

That the witness, before examination, was, by me,
11 duly sworn to testify the truth, the whole truth, and nothing
12 but the truth, and that the witness reserved signature;

13

That I am not a relative, employee, attorney or
14 counsel of any party to this action or relative or employee of
15 such attorney or counsel, and I am not financially interested
16 in the said action or the outcome thereof;

17

That I am herewith securely sealing the deposition of
18 SHARON KRAUSE and serving the same upon MS. KATHLEEN ZELLNER.

19

IN WITNESS HEREOF, I have hereunto set my hand
20 this _____ day of _____, 2012.

21

22

23

24

25

Dixie J. Cattell, RPR, CCR
NCRA Registered Professional Reporter
Washington Certified Court Reporter CSR#2346
License Expires July 16, 2013.

EXHIBIT H

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

Page 1

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY)	
SPENCER, and KATHRYN E. TETZ,)	
)	
Plaintiffs,)	
vs.)	No. 3:11-cv-05424-BHS
)	
FORMER PROSECUTING ATTORNEY FOR)	
CLARK COUNTY JAMES J. PETERS,)	
DETECTIVE SHARON KRAUSE,)	
SERGEANT MICHAEL DAVIDSON,)	
CLARK COUNTY PROSECUTOR'S)	
OFFICE, CLARK COUNTY SHERIFF'S)	
OFFICE, THE COUNTY OF CLARK and)	
JOHN DOES ONE THROUGH TEN,)	
)	
Defendants.)	

DEPOSITION UPON ORAL EXAMINATION OF
REBECCA J. ROE

Thursday, December 13, 2012

Taken at 810 3rd Avenue, Suite 500
Seattle, Washington

1:36 p.m.

REPORTED BY: KAREN M. GRANT, CCR NO. 2155
DIXIE CATTELL & ASSOCIATES
COURT REPORTERS & VIDEOCONFERENCING
(360) 352-2506 * (800) 888-9714

REBECCA J. ROE - 12/13/2012

Page 217

1 victim in a child sex abuse case, prosecutors should
2 request an order prohibiting the defendant contact with
3 other children?

4 A. Yes.

5 Q. Okay. Just a couple more.

6 It is your testimony that the video relates to
7 probable cause, correct?

8 A. That the video relates --

9 MS. FETTERLY: Object as to form.

10 A. I guess I don't understand what ...

11 Q. Was it your testimony that the information
12 gathered in the video of December 11th of 1984 relates
13 to probable cause?

14 MS. FETTERLY: Object as to form.

15 A. I still don't -- yeah, I'm -- I'm -- I don't
16 understand that --

17 The information in the video would be
18 information you would consider in determining whether or
19 not to file charges.

20 Q. And the video should have been disclosed prior
21 to Ray's guilty plea, correct?

22 A. Yes.

23 Q. And you agree that a defense attorney could
24 have argued that the video negated probable cause,
25 correct?

REBECCA J. ROE - 12/13/2012

Page 224

1 C E R T I F I C A T E

2

3 STATE OF WASHINGTON)
4 COUNTY OF PIERCE)
5

6 I, the undersigned officer of the Court,
7 under my commission as a Notary Public in and for
the State of Washington, hereby certify that the
foregoing deposition upon oral examination of the
witness named herein was taken stenographically
before me and thereafter transcribed under my
direction;

10 That the witness before examination was
11 first duly sworn by me to testify truthfully;
12 that the transcript of the deposition is a full, true
13 and correct transcript of the testimony, including
questions and answers and all objections, motions,
and exceptions of counsel made and taken at the
time of the foregoing examination;

14 That I am neither attorney for, nor a
15 relative or employee of any of the parties to the
16 action; further, that I am not a relative or
employee of any attorney or counsel employed by the
parties hereto, nor financially interested in its
outcome.

17

18

19 IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 26th day of December, 2012.

20

21

22

23

24

25

KAREN M. GRANT
NOTARY PUBLIC in and for the
State of Washington, residing
at Edgewood.
My commission expires 3/13/14.

EXHIBIT I

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

DEPOSITION OF MATTHEW RAY SPENCER, 11/13/12

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY)
SPENCER and KATHRYN E. TETZ,)
Plaintiffs,)
v.) No. 11-5424 BHS
FORMER DEPUTY PROSECUTING ATTORNEY FOR)
CLARK COUNTY JAMES M. PETERS, DETECTIVE)
SHARON KRAUSE, SERGEANT MICHAEL)
DAVIDSON, CLARK COUNTY PROSECUTOR'S)
OFFICE, CLARK COUNTY SHERIFF'S OFFICE,)
THE COUNTY OF CLARK, SHIRLEY SPENCER)
and JOHN DOES ONE through TEN,)
Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF
MATTHEW RAY SPENCER

Tuesday, November 13, 2012
10:00 a.m.
1201 Third Avenue, Suite 2200
Seattle, Washington

Reported by Marlis J. DeJongh, CCR, RPR
Lic. No. DE-JO-NM-J498K9

MARLIS J. DeJONGH & ASSOCIATES
www.marlisdejongh.com

DEPOSITION OF MATTHEW RAY SPENCER, 11/13/12

101

1 Q. Was it handed to you in this form that we see it
2 marked here as Exhibit 3?

3 A. I believe so.

4 Q. Do you know how Mr. Camiel's office came up with
5 the content?

6 A. Came up through me.

7 Q. Just explain to me how this was drafted?

8 A. I came in, gave an interview, and they typed it up.

9 Q. And does this declaration accurately reflect the
10 content of the statements you made to Mr. Camiel that day?

11 A. Most of it is.

12 Q. When you say most of it, are there parts that you
13 don't feel are accurate?

14 A. Yeah, Paragraph 18, While I believe that I did tell
15 her the things written in the report attributed to me about
16 my father sexually abusing me, none of it is true.

17 When it comes to that, I went along with what she had
18 told me had happened to me. There wasn't anything that I
19 had generated on my own except for after that maybe the
20 details of maybe a couple of things, the yellow sweater, red
21 Porsche. Other than that I went along with what she told me
22 to say.

23 Q. Well, do you now think that this, the statement
24 that you just read, the second sentence in Paragraph 18 is
25 not accurate?

DEPOSITION OF MATTHEW RAY SPENCER, 11/13/12

202

1 REPORTER'S CERTIFICATE

2

3 STATE OF WASHINGTON)
4 COUNTY OF KING) ss.
5

6 I, MARLIS J. DeJONGH, CCR, RPR, a Notary Public in
7 and for the State of Washington, do hereby certify:
8 That prior to being examined, the witness named in the
9 foregoing deposition was duly sworn to testify the truth,
10 the whole truth and nothing but the truth;

11 That said deposition was taken down by me in
12 shorthand at the time and place therein named and thereafter
13 transcribed by means of computer-aided transcription, and
14 that the foregoing transcript contains a full, true and
15 verbatim record of the said deposition;

16 I further certify that I have no interest in the
17 event of the action.

18 WITNESS my hand and seal this 29th day of November,
19 2012.

20

21

Notary Public in and for the State
of Washington, residing in Seattle.
My commission expires 01/2016.
Lic. No. DE-JO-NM-J498K9

22

23

24

25

EXHIBIT Q

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

1

CLYDE RAY SPENCER, MATTHEW)
RAY SPENCER, and KATHRYN E.)
TETZ,)
Plaintiffs,)
vs.) NO. 3:11-cb-05424-BHS
FORMER PROSECUTING ATTORNEY)
FOR CLARK COUNTY JAMES M.)
PETERS, DETECTIVE SHARON)
KRAUSE, SERGEANT MICHAEL)
DAVIDSON, CLARK COUNTY)
PROSECUTOR'S OFFICE, CLARK)
COUNTY SHERIFF'S OFFICE, THE)
COUNTY OF CLARK and JOHN DOES)
ONE THROUGH TEN,)
Defendants.)

15 DEPOSITION UPON ORAL EXAMINATION OF JAMES M. PETERS

Thursday, November 8, 2012
Olympia, Washington

JOHNSON (James M. Peters, 11/8/12)

97

1 Q Did you have any understanding that Shirley Spencer had
2 made statements that she did not believe Ray had done
3 anything to Katie?

4 A I know she was standing by her husband. I remember that.

5 Q Okay. Did you know that Katie had stated that she did not
6 want to talk to boys about the abuse?

7 A To whom and when? I don't remember that.

8 Q Okay. You can take a look at Exhibit 3, if you'd like.
9 This is Rebecca Roe's report on page 1.

10 A (Witness complying).

11 Q Seven lines up from the bottom.

12 A (Witness perusing document) I see where that's written
13 there. It says, "Sharon Krause had to spend several hours
14 one-on-one with victim who also indicated she would not
15 talk about it, quote, with boys, end quote."

16 Q All right. And staying on that page since you have it in
17 front of you, did you also know that Katie did not talk to
18 a female counselor about it?

19 A Actually, that's in -- I see that is written in Rebecca
20 Roe's report, but that's not accurate.

21 Q Well, Rebecca Roe reported that Katie would not talk to a
22 female counselor about it, correct?

23 A I see what's written in Rebecca Roe's report, but as I told
24 you, that's inaccurate. I talked to the female counselor
25 myself who told me that she had been speaking with Katie

JOHNSON (James M. Peters, 11/8/12)

98

1 since September and that on November 1st, 1984, Katie had
2 described the abuse to her using anatomical dolls.

3 Q That was Ann Link, right?

4 A Yes.

5 Q November 1st was the first time you say -- you say -- Katie
6 Spencer reported it, correct?

7 A I didn't say that.

8 Q To Ann Link?

9 A Oh, all I know is what Ann Link told me. I don't know
10 about anything else.

11 Q Okay. And that first revelation that you're talking about
12 came to Ann Link as Ann Link told you on November 1st of
13 '84, correct?

14 A Just to be clear, there had been prior revelations to
15 Shirley Spencer and to Sharon Krause. The first
16 revelation --

17 Q I'm just talking about Ann Link.

18 A As far as I know, when Mr. Rulli and I talked to Ann Link
19 in Sacramento, she told us that Katie had disclosed to her
20 sexual abuse by Ray, described it with anatomical dolls,
21 including fellatio, my word, not hers, oral sex with a man,
22 on November 1st.

23 Q That was after Sharon Krause had spent a substantial period
24 of time with Sharon Krause -- I mean with Katie Spencer,
25 correct?

1

C E R T I F I C A T E

2

I, DIXIE J. CATTELL, the undersigned Registered
3 Professional Reporter and Washington Certified Court Reporter,
4 do hereby certify:

5

That the foregoing deposition of JAMES M. PETERS was
6 taken before me and completed on the 8th day of November,
7 2012, and thereafter transcribed by me by means of
8 computer-aided transcription; that the deposition is a full,
9 true and complete transcript of the testimony of said witness;

10

That the witness, before examination, was, by me,
11 duly sworn to testify the truth, the whole truth, and nothing
12 but the truth, and that the witness reserved signature;

13

That I am not a relative, employee, attorney or
14 counsel of any party to this action or relative or employee of
15 such attorney or counsel, and I am not financially interested
16 in the said action or the outcome thereof;

17

That I am herewith securely sealing the deposition of
18 JAMES M. PETERS and promptly serving the same upon MR. DOUGLAS
19 JOHNSON.

20

IN WITNESS HEREOF, I have hereunto set my hand

21

this _____ day of _____, 2012.

22

23

Dixie J. Cattell, RPR, CCR
24 NCRA Registered Professional Reporter
25 Washington Certified Court Reporter CSR#2346
License Expires July 16, 2013.

EXHIBIT R

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENDER, MATTHEW) NO. C11-5424BHS
RAY SPENDER, and KATHRYN E.)
TETZ,)
)
Plaintiffs,)
vs.)
)
FORMER DEPUTY PROSECUTING ATTORNEY)
FOR CLARK COUNTY JAMES M. PETERS,)
DETECTIVE SHARON KRAUSE, SERGEANT)
MICHAEL DAVIDSON, CLARK COUNTY)
PROSECUTOR'S OFFICE, CLARK COUNTY)
SHERIFF'S OFFICE, THE COUNTY OF)
CLARK and JOHN DOES ONE THROUGH)
TEN,)
)
Defendants.)
)

VIDEOTAPED/VIDEOCONFERENCED DEPOSITION OF:

WILLIAM BERNET, M.D.

Taken on Behalf of the Defendant/Michael Davidson

December 4, 2012

VOWELL & JENNINGS, INC.
Court Reporting Services
207 Washington Square Building
214 Second Avenue North
Nashville, Tennessee 37201
(615) 256-1935

1 the position that those front-line field
2 professionals would have known in a broader sense
3 how to have a conversation with children and the
4 implications of those conversations even if there
5 were no specific written guidelines.

6 Q So just going back to the one other
7 question I had there. I just want to make sure I
8 understood your testimony about defendant Davidson.

9 You referenced him as a prosecutor, I
10 think inadvertently. But is it your view that
11 defendant Davidson knew or should have known that
12 Krause's -- Detective Krause's and Prosecutor
13 Peters' interviews would yield false information?

14 A Yeah. I'm sorry. You know, I guess
15 Davidson was Detective Krause's supervisor and would
16 have reviewed this.

17 Q Right.

18 A Yeah, I got him mixed up with Davis, I
19 think the other guy's name is -- Curtis. Curtis is
20 the other person.

21 That's correct. I think that an
22 experienced investigator looking at the details of
23 those written reports would have been concerned
24 about the coercive nature of them.

25 MR. FREIMUND: All right, sir. That's all

REPORTER'S CERTIFICATE

2 I certify that the witness in the
3 foregoing videotaped/videoconferenced deposition,
4 WILLIAM BERNET, M.D., was by me duly sworn to
5 testify in the within-entitled cause; that the said
6 deposition was taken at the time and place therein
7 named; that the testimony of said witness was
8 reported by me, a Shorthand Reporter and Notary
9 Public of the State of Tennessee authorized to
10 administer oaths and affirmations, and said
11 testimony, pages 7 through 171, was thereafter
12 transcribed into typewriting.

13 I further certify that I am not of counsel
14 or attorney for either or any of the parties to said
15 deposition, nor in any way interested in the outcome
16 of the cause named in said deposition.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand the 11th day of December, 2012.

19
20
21
22
23
24
25

Deborah J. Harris, TLCR No. 472
My commission expires: 5/03/2016

EXHIBIT U

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

CLYDE RAY SPENCER,
MATTHEW RAY SPENCER, and
KATHRYN E. TETZ,

Plaintiffs,

vs.

Case No. C11-5425BHS

FORMER DEPUTY PROSECUTING ATTORNEY
FOR CLARK COUNTY JAMES M. PETERS,
DETECTIVE SHARON KRAUSE,
SERGEANT MICHAEL DAVIDSON,
CLARK COUNTY PROSECUTOR'S OFFICE,
CLARK COUNTY SHERIFF'S OFFICE,
THE COUNTY OF CLARK, AND
JOHN DOES ONE THROUGH TEN,

Defendants.

/

Deposition of

ANN LINK, PH.D.

Monday, December 17, 2012

Reported by Karen Cosgrove, CSR No. 12425

1 Q -- page 97 of the document, did you see
2 reference in Mr. Peters' deposition on page -- it starts
3 actually on page 97, but at the top of 98, did you see
4 reference to your name in Mr. Peters' dep?

5 A Yes.

6 Q And if we look at page 98, at 9 through 22,
7 Mr. Peters states at line 5 -- or the question at line 5
8 is "November 1st was the first time you say -- you say
9 Katie Spencer reported it. Correct?

10 "ANSWER: I didn't say that.

11 "QUESTION: To Ann Link.

12 "ANSWER: Oh. All I know is what Ann Link told
13 me. I don't know about anything else." That's at line 9
14 and 10.

15 "QUESTION: Okay. And that first revelation
16 that you're talking about came to Ann Link as Ann Link
17 told you on November 1st of 1984. Correct?

18 "ANSWER: Just to be clear, there had been
19 prior revelations to Shirley Spencer and to
20 Sharon Krause. The first revelation.

21 "QUESTION: I'm just talking about Ann Link.

22 "ANSWER: As far as I know, when Mr. Rulli and
23 I talked to Ann Link in Sacramento, she told us that
24 Katie had disclosed to her sexual abuse by Ray.
25 Described it with anatomical dolls, including fellatio --

1 my word, not hers -- oral sex with a man, on
2 November 1st."

3 Do you see that statement of Mr. Peters?

4 A Yes.

5 Q Is that true or false that you told Mr. Peters
6 and Mr. Rulli that Katie had disclosed or described on
7 anatomical dolls fellatio, oral sex with a man?

8 MR. JUDGE: Objection. This is Dan Judge.
9 Objection to the form of the question.

10 Go ahead.

11 BY MS. ZELLNER:

12 Q You can answer.

13 A I'm sorry. Did you want me to answer?

14 Q Yeah. Is that true or false that you told
15 Mr. Peters and Mr. Rulli that Katie had disclosed to you
16 sexual abuse by Ray. "Described it with anatomical
17 dolls, including fellatio -- my word, not hers -- oral
18 sex with a man, on November 1st."

19 A In my --

20 MR. JUDGE: This is Dan Judge. Same objection.

21 BY MS. ZELLNER:

22 Q Okay. Is that true or false?

23 A In my recollection --

24 MR. JUDGE: Objection.

25 MS. ZELLNER: Okay.

1 THE WITNESS: Did you want me to --

2 MS. ZELLNER: I've got the objection noted.

3 Could you let the witness answer?

4 THE WITNESS: Am I supposed to answer?

5 BY MS. ZELLNER:

6 Q Yes.

7 A Oh. Sorry. No. That's false, according to my
8 recollections.

9 Q And if we look at page 125 of Mr. Peters'
10 deposition, we look at -- hang on just a minute.

11 It says at line 12 -- this is Mr. Peters'
12 answer: "The information now -- your question was
13 compound. Had multiple subjects in it. But the
14 behavioral indicators portion of it was relayed to me by
15 Ann Link, and it's in the notes of Rulli and my interview
16 with Ann Link."

17 Do you see that answer?

18 A Yes.

19 Q Okay. And that leads me to the notes of
20 Mr. Peters, which follow those two pages.

21 And have you had an opportunity to look at
22 those notes?

23 A Yes.

24 Q And let's look at where your name is mentioned.

25 At the bottom it says, "Spencer," Bates

1 STATE OF CALIFORNIA

2

3

4 I, Karen Cosgrove, CSR 12425, a Certified
5 Shorthand Reporter in and for the State of California, do
6 hereby certify that, prior to being examined, the witness
7 named in the foregoing deposition was by me duly sworn to
8 testify the truth, the whole truth, and nothing but the
9 truth; that said deposition was taken down by me in
10 shorthand at the time and place named therein and was
11 thereafter transcribed under my supervision; that this
12 transcript contains a full, true and correct record of
13 the proceedings which took place at the time and place
14 set forth in the caption hereto; that this transcript was
15 prepared in accordance with the minimum transcript format
16 standards as set forth by the California Certified
17 Shorthand Reporters Board.

18 I further certify that I have no interest in
19 the event of this action.

20

21 EXECUTED this 31st day of December, 2012.

22

23

24

25 _____
Karen Cosgrove

EXHIBIT KK

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

United States District Court
Western District of Washington

CLYDE RAYMOND SPENCER) Case No.
Petitioner,) C94-5238 RJB
vs.)
JOSEPH KLAUSER, Warden, Idaho State)
Institution,)
Respondent.)

DEPOSITION OF JAMES MATTHEW PETERS

July 30, 1996

Reported by
Jodi C. Williams

ORIGINAL



208-345-3704 • 1-800-424-2354

Fax 208-345-3713

605 WEST FORT STREET

P.O. BOX 1625 • BOISE, ID 83701

Home Page: <http://www.weblfactor.com/tucker/>
E-Mail: tucker@mci.net

1 Q. DeAnne?

2 A. I met them both.

3 Q. It was DeAnne?

4 A. Yes.

5 Q. Did you ever interview Matt Hansen?

6 A. I don't think so. It was never my
7 practice, nor is it my practice now, to get
8 involved in interviews with child molesting victims
9 unless I'm certain the case is going to go to
10 trial. I think they have to tell their story to
11 too many grown-ups that they don't know without
12 having to meet another grown-up and tell the ugly
13 details to them.

14 So I don't have any memory of doing that,
15 and it wouldn't have been my practice to do that.

16 Now, if I had, there would be detailed
17 notes because I always took notes. And there would
18 be notes in the file. So I'm not saying I didn't,
19 but I don't think I did.

20 That case was heading toward trial. But
21 I usually didn't get involved with actually
22 preparing the child for trial until a couple of
23 weeks before when I was sure it was going to go.

24 I might have met them. And, in fact, my
25 practice would have been to meet the child, take

REPORTER'S CERTIFICATE

STATE OF IDAHO)
)
 County of Ada) ss.

I, Jodi C. Williams, a Notary Public in and for the State of Idaho,
do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true, and verbatim record of the said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 12 day of
August, 1996.

Jodi C. Williams
NOTARY PUBLIC in and for the State of Idaho;
residing at Mountain Home, Idaho.

My commission expires 2-7-2001.

EXHIBIT WW

Supplemental Declaration of Kathleen T. Zellner
In Support of Plaintiff's Responses to Defendants'
Renewed / Second Motions for Summary Judgment
(C11-5424BHS)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CLYDE RAY SPENCER,)
)
 Petitioner,)
)
 vs.) No. C94-5238 RJB
)
JOSEPH KLAUSER, Warden,)
Idaho State Institution,)
)
 Respondent.)

DEPOSITION UPON ORAL EXAMINATION
OF
SHIRLEY J. SPENCER

DATE TAKEN: June 4, 1996

COPY

TIME: 1:00 p.m.

PLACE: 1104 Main Street, M-110
Vancouver, Washington

COURT REPORTER: CINDY J. HOLLEY, CSR

RIDER & ASSOCIATES
COURT REPORTERS
P.O. Box 245
Vancouver, Washington 98666

1 A. I don't remember discussing it.

2 Q. Do you recall having a discussion with Sergeant
3 Davidson about the results of Matt's examination?

4 A. Now we're talking 12 years ago, I don't remember.

5 Q. Do you recall explaining to my investigator and I that
6 you did have a discussion with Sergeant Davidson and he told
7 you that the fact that the doctor didn't find anything didn't
8 mean that Matt wasn't abused?

9 A. No, I don't remember that.

10 Q. In fact, is that what Sergeant Davidson told you?

11 A. I don't remember that he told me that, no.

12 Q. Did you discuss with either Sergeant Davidson or
13 Detective Krause the fact that Matt had been examined?

14 A. I'm sure I did because they told me to go.

15 Q. Do you remember signing any kind of a release or a
16 waiver for the Clark County Sheriff's office to allow them to
17 get Matt's medical records?

18 A. I don't remember it, but I probably would have if
19 they'd asked me to, but I don't remember it.

20 Q. Well, let me clarify what you have told us, okay.

21 You were referred by you believe Sharon Krause to go
22 to have Matt physically examined; is that correct?

23 A. Yes.

24 Q. And the purpose of the examination was to look for any
25 evidence of sex abuse?

CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF LEWIS)

5 I, Cindy J. Holley, a Notary Public for Washington,
6 certify that the deposition of SHIRLEY J. SPENCER here occurred
7 at the time and place set forth in the caption hereof; that at
8 said time and place I reported in Stenotype all testimony
9 adduced and other oral proceedings had in the foregoing matter;
10 that thereafter my notes were reduced to typewriting under my
11 direction; and the foregoing transcript, pages 1 to 18 both
12 inclusive, contains a full, true and correct record of all such
13 testimony adduced and oral proceedings had and of the whole
14 thereof.

15 I further advise you that as a matter of firm policy,
16 the Stenographic notes of this transcript will be destroyed
17 two years from the date appearing on this Certificate unless
18 notice is received otherwise from any party or counsel hereto
19 on or before said date;

20 Witness my hand and notarial seal at Mossyrock,
21 Washington, this 10th day of June 1996.

Cindy J. Holley, CSR #HOLLECJ399P5
Notary Public for Washington
My commission expires: 11-9-96